

REMARKS:

Claims 1-3 and 9-21 are pending in the application. Claim 1 is amended. Applicants request reconsideration and allowance in view of the above amendments and the following remarks.

Rejection Under 35 U.S.C. § 112, First Paragraph:

Claims 1-3 and 9-21 are rejected under 35 U.S.C. § 112, first paragraph. According to the Office Action, claims 1, 11, and 16 refer to a third, neutral position which allegedly is not disclosed or recited in the specification, and the remainder of the claims inherit that alleged deficiency. Applicants traverse this rejection.

Paragraphs [0029] and [0030]¹ of the specification as filed refer to the spring-loaded switch control element as returning to a “normal” position when it is released from being pushed in or pulled out, respectively. Applicants have amended the specification to clarify that that “normal” position is the same as the claim-referenced “neutral” position; in other words, “normal” and “neutral” may be used interchangeably as referring simply to a position that is between the pushed-in position and the pulled-out position. Accordingly, Applicants request that the rejection be withdrawn.

Rejections Under 35 U.S.C. § 103

Claim 1 is rejected under 35 U.S.C. § 103(a)² as allegedly obvious based on Del Rosso, U.S. Patent 5,736,696, in view of Rayburn, U.S. Patent 3,984,797. According to the Office Action, Del Rosso shows a push-pull rotary switch, but not a third, neutral position. Rayburn, however, shows a (non-rotary) switch operator with pushed-in and pulled-out positions relative to

¹ Those two paragraphs were intended to be referenced, relied on, and amended in the original Response to the previous Office Action (and were actually amended in the subsequently resubmitted version thereof). The specific paragraph numbers had been misidentified in the original Response due to an inconsistency between the paragraph numbering in the application as filed and the html version of the application that is available on the Patent and Trademark Office’s website.

² The Office Action incorrectly recites 35 U.S.C. § 102(b) in paragraph 7. Paragraph 4 and the substance of paragraph 7, however, make clear that § 103 was intended.

a third, neutral position. Therefore, according to the Office Action, it would have been obvious to obtain the claimed invention by combining those two references “to modify the switch of Del Rosso to have a neutral axial position, because the neutral position can be an OFF position.” Applicants traverse this rejection on at least two grounds.

First, Applicants submit that the combination of references represents nothing more than hindsight-based reconstruction of the claim, which is impermissible. In particular, the logic of the Office Action is that reference 1 shows X, reference 2 shows Y, and therefore it would have been obvious to combine the references because Y could be something in particular that is consistent with the claim. Such an obviousness construct is incorrect and impermissible. The standard for making a combination of references is not whether a feature in a reference can be something that is set forth in the claim; the standard is whether something – either in the references themselves or in the art in general – actually teaches, suggests, or motivates the proffered combination to be made. Here, the Examiner provides no evidence whatsoever of any such teaching, suggestion, or motivation to combine the references, and the rejection is therefore deficient in that respect.

Second, even if the combination of references were to be made, it would not yield the claimed invention because Rayburn does not, in fact, show the feature for which the Examiner is relying on it. In particular, as clarified by the amendment to claim 1, the first axial position has a first lighting function associated with it, and the second axial position has a second lighting function associated with it. In Rayburn, in contrast, there is just a single function associated with activation of the switch operator: turning on the machinery it is being used to control (on and off not constituting separate functions). Furthermore, it is not clear that that function will be effected in both non-neutral axial positions of the switch operator. Specifically, Rayburn indicates (column 2, lines 58-63) that the electrical connections to the switches the operator actuates are typically arranged so that a motor will start when the central element of the operator (element 12 in Rayburn) is either pushed or pulled. That is not the same, however, as saying that the motor will start when the central element is both pushed and pulled. Rather, it can be interpreted as indicating that, depending on the specific arrangement of the electrical contacts and/or how the operator is linked to the plungers (B₁ and B₂ in Rayburn), the operator will turn on the motor when pushed in some configurations/instances or when pulled in others.

Thus, Applicants traverse the rejection of claim 1 and request that it be withdrawn.

Claims 3 and 9 are rejected under 35 U.S.C. § 103(a) based on Del Rosso in view of Rayburn as applied to claim 1 and further in view of Hubacher, EP 0 765 775, on which the Examiner relies for disclosure of illumination of a symbol on the switch (claim 3) and axial positions corresponding to different fog lamp functions (claim 9). Applicants traverse the rejection and request that it be withdrawn for at least the same reasons set forth above with respect to claim 1 (from which claims 3 and 9 depend), since the combination of references fails to disclose the subject matter of claim 1 and Hubacher does not remedy that deficiency.

In view of the foregoing, Applicants submit that all claims are in condition for allowance, and timely Notice to that effect is respectfully requested.

The undersigned representative requests any extension of time that may be deemed necessary to further the prosecution of this application.

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 14-1437, referencing Attorney Docket No.: 7589.159.PCUS00.

In order to facilitate the resolution of any issues or questions presented by this paper, the Examiner may directly contact the undersigned by phone to further the discussion.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Tracy W. Druce". The signature is fluid and cursive, with the first name "Tracy" being more prominent and the last name "Druce" following in a similar style.

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